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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOHN ALLEN BOOTH,

CASE NO. C20-6264 BHS

9 Petitioner,

ORDER

10 v.

11 ERIC JACKSON,

12 Respondent.

13 THIS MATTER comes before the Court on Petitioner Booth's motion for a 28
14 U.S.C. § 2253 Certificate of Appealability on his habeas grounds 1–4 and 9 (his
15 “eavesdropping” grounds”), and on his ineffective assistance of counsel ground, based on
16 counsel's failure to locate or call alibi¹ witnesses. Dkt. 88. Booth also seeks a certificate
17 of appealability on his failure to provide a cell phone triangulation expert ground, which
18 the Court dismissed, along with grounds 5 and 6, in prior orders. *See* Dkts. 28 and 42.

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20 ¹ Booth's initial habeas petition described as Ground 7 his ineffective assistance of
21 counsel claim based on the failure provide “cell phone triangulation” expert testimony, and his
22 ineffective assistance claim based on the failure to locate alibi witnesses as Ground 8. Dkt. 1 at
16–17. The Court's prior Order at Dkt. 42 inadvertently reversed these numbers, and the parties
have since logically identified Booth's habeas grounds by their descriptive names rather than
ground numbers. Dkt. 89 at 3 n2.; Dkt. 91 at 1 n1. This Order will follow suit.

1 After several rounds of briefing, two prior substantive orders, and an evidentiary
2 hearing, the Court adopted Magistrate Judge Fricke's Report and Recommendation
3 (R&R), Dkt. 20, and denied Booth's habeas petition in its entirety. Dkt. 83. The R&R
4 recommended that the Court deny a certificate of appealability, though the Court's order
5 did not expressly address that issue.

6 A petitioner seeking post-conviction relief under 28 U.S.C. § 2254 may appeal a
7 district court's dismissal of his federal habeas petition only after obtaining a certificate of
8 appealability from a district or circuit judge. A certificate of appealability may issue only
9 where a petitioner has made "a substantial showing of the denial of a constitutional
10 right." *See* 28 U.S.C. § 2253(c)(2). A petitioner satisfies this standard "by demonstrating
11 that jurists of reason could disagree with the district court's resolution of his
12 constitutional claims or that jurists could conclude the issues presented are adequate to
13 deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327
14 (2003).

15 Booth's motion identifies eight points upon which he contends "reasonable jurists
16 could fairly debate" regarding his "eavesdropping" habeas grounds. Dkt. 88 at 3–5. As
17 Booth acknowledges, the Court did not find his testimony about his inability to
18 communicate with his defense team to be credible. Booth's current claim that "he never
19 told the investigator anything that, if overheard, would be harmful," Dkt. 88 at 5, does not
20 undermine the fact that he admitted he felt free to talk to the investigator in the attorney
21 client booth. *See* Dkt. 83 at 7. The Court will not issue a certificate of appealability on
22 Booth's "eavesdropping" grounds 1–4 and 9.

1 The Court does not agree that reasonable jurists could disagree about the merit of
2 Booth's ineffective assistance of counsel ground, based on attorney Hunko's alleged
3 failure to locate or call alibi witnesses that Booth claims must have seen him selling
4 drugs at the Red Barn Tavern at the time of the murders. Booth claims he knows who
5 actually committed the murders but did not and will not share that information due to his
6 "code." He claims that although the investigator expressly told him "I need more from
7 you" about the alibi witnesses, Booth was free to withhold exculpatory information and
8 to instead put the onus on Hunko to find other alibi witnesses. There is no evidence there
9 were any such witnesses. The State correctly contends that it was not objectively
10 unreasonable for his attorney to focus on developing a defense strategy that did not rely
11 on these alleged alibi witnesses where there was "*overwhelming*" evidence that Booth
12 was, in fact the shooter. Dkt. 89 at 10. The Court will not issue a certificate of
13 appealability on Booth's "alibi witness" habeas ground.

14 Nor will it issue such a certificate on the cell phone triangulation ground,
15 dismissed prior to the evidentiary hearing. Booth's motion for a certificate of
16 appealability is **DENIED**. His motion to broaden his motion for a certificate of
17 appealability, Dkt. 90, is also **DENIED**.

18 **IT IS SO ORDERED.**

19 Dated this 17th of January 2025.

20 
21 BENJAMIN H. SETTLE
22 United States District Judge